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Arnold Francom and Glen Palmer v. Utah State Tax Commission : Brief of Respondent

Utah Supreme Court

Walter L. Budge; Norman S. Johnson; F. Burton Howard; Attorneys for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

ARNOLD FRANCOM, dba DAY-NITE LAUNDERCENTER NO. 8,

and

GLEN PALMER, dba DAY-NITE LAUNDERCENTER NO. 6,

Appellants,

vs.

UTAH STATE TAX COMMISSION,

Respondent.

Case No. 9271

BRIEF OF RESPONDENT STATE TAX COMMISSION OF UTAH

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STATEMENT OF THE CASE

By statutory amendment, effective July 1, 1959, the Utah sales tax was extended to and is now imposed upon "the amount paid or charged for laundry and dry cleaning services." Utah Code Annotated Section 59-15(g) 1953.

Taypayers contend that they are not subject to taxation under the Act, as amended, and state that the sole issue before this court is whether or not they "render" laundry services. The Tax Commission submits that such a state-

ment of the question tends to unduly restrict the scope of the statute and that the issue more accurately stated is whether or not amounts received from coin operated washers and dryers in a laundercenter constitute amounts paid or charged for laundry and dry cleaning services.

STATEMENT OF FACTS

The Tax Commission agrees substantially with the statement of facts as set forth by appellants.

STATEMENT OF POINTS

1. AMOUNTS RECEIVED FROM COIN OPERATED WASHERS AND DRYERS IN A LAUNDER CENTER CONSTITUTE AMOUNTS PAID OR CHARGED FOR LAUNDRY AND DRY CLEANING SERVICES WITHIN THE MEANING OF 59-15-4(g), UTAH CODE ANNOTATED, 1953, AS AMENDED.

II. THE DENOMINATION OF A PORTION OF TAXPAYERS' ACTIVITIES AS A RENTAL OF EQUIPMENT WILL NOT SERVE TO AVOID THE SERVICES TAX.

III. THE UTAH LEGISLATURE INTENDED TO EXTEND THE SERVICES TAX TO AMOUNTS PAID OR CHARGED FOR THE USE OF COIN OPERATED WASHERS AND DRYERS.

IV. THE RULE OF STRICT CONSTRUCTION OF TAXING STATUES IS NOT APPLICABLE IN THIS CASE.

ARGUMENT

POINT I

AMOUNTS RECEIVED FROM COIN OPERATED WASHERS AND DRYERS IN A LAUNDER CENTER CONSTITUTE AMOUNTS PAID OR CHARGED FOR LAUNDRY AND DRY CLEANING SERVICES WITHIN THE MEANING OF 59-15-4(g), UTAH CODE ANNOTATED, 1953, AS AMENDED.

To adopt taxpayers' contention as to the meaning of the term "laundry services" would unduly restrict its meaning and thus circumvent the intention of the legislature. In attempting to define the noun "services" from the verb "services" error is committed. Taxpayers seek to impose the requirement of personal action as a requisite necessary to constitute service. It is submitted that such a requirement improperly limits the meaning of laundry services.

"Services", as such, has a variety of meanings, dependent upon the context or sense in which it is used. In some instances it has been used to include a sale, as a sale of food by a restaurant. "The verb 'service' means to perform services of maintenance, supply, repair, installation, distribution, etc., for or upon. The noun 'service' means supply of needs; use; also formerly, utility, act or means of supplying some general demand . . ." *Central Power & Light Co. v. State, Tex. Civ. App., 165 S.W. 2nd 920.* See also Webster's New International Dictionary (1938); *Addison Miller, Inc. v. Comm. of Taxation, 249 Minn. 24, 81 N.W. 2nd 89.* This dictionary in defining what is meant by service includes also the following which are deemed pertinent:

> "19. Act or means of supplying some general demand."
> * * *

> "20. Anything supplied for, accommodation. Work esp. of supply and repair, done to meet the needs of customers; as 24-hour service.
> * * *
>
> "22. Usually in pl. any result of useful labor which does not produce a tangible commodity. In economics, such business concerns as railroads, telephone companies, and laundries, and such persons as physicians, are regarded as performing services."

The same dictionary defines "laundry" as:

> "2. An establishment or place where laundry is done."

"Launder" is defined as:

> "To wash, as clothes; to wash and smooth with a flat iron or mangle."

Appellants devote three pages of their brief to attempting to convert the court to their view as to what the "approved usage of the language" is in regard to laundry services. It is obvious that the definition of this phrase must not be derived from other decisions contruing the word "services" in an entirely different context. The plain meaning of the term "laundry services" as used by the legislature was intended to include such laundry service as is offered by the appellants.

POINT II.

THE DENOMINATION OF A PORTION OF TAXPAYERS' ACTIVITIES AS A RENTAL OF EQUIPMENT WILL NOT SERVE TO AVOID THE SERVICES TAX.

Even if it found that the plain meaning of the term

"laundry service" is "acts of laundering" as contended by taxpayers, a more far reaching issue presented by this appeal is whether appellants may avoid what normally would constitute a taxable transaction by mechanization or elimination of the human element from a service transanction and denominating the same a rental of equipment.

The subject matter of this appeal is denominated by appellants themselves as a "laundercenter." Interpreted, this means a place where laundering or washing is done. The sole business of the owner of such a laundercenter is to sell the fruits of his business to the public. Appellants are in the laundry business. They do not sell machines. They make them available to the public for a period of approximately one-half hour for washers and five minutes for dryers, and in return an exchange or consideration passes from the customer to the owner. The totality of the facilities provided for the customer is such that it constitutes more than a mere rental of washing and drying machines. In fact, for the consideration that changes hands the customer receives far more than the mere naked right of possession of a fixed washing or drying machine. He receives the complete facilities of a laundercenter, which include soap and bleach dispensers, chairs, washers, dryers, refreshments, coin changers, folding tables and carts. Appellants are providing service consisting of a comfortable, convenient, relatively inexpensive place where laundry is done at a discount over prevailing prices. In making such a facility available on a competitive basis, appellants provide laundry services.

However, it is immaterial whether or not the services provided by appellants constitute a rental of machinery,

because where the legislature has imposed a tax upon a transaction which is broad enough by definition to cover the activity of appellant, the result is simply a matter of statutory interpretation as to whether or not the activities of appellants fall within those contemplated by the legislature. It is significant that the Utah Legislature has, by the enactment of 59-15-2(g) extended the sales tax law in exactly this manner to rental transactions:

> "When right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if an outright sale were made, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor or lessor upon the rentals paid."

It is submitted that the presence or absence of the human or personal element in a service transaction should not be determinative as to whether or not here is a taxable service performed. It is also submitted that the tax in question is a transaction tax upon services and that if it is found that appellants do perform laundry services, it matters not whether the technical requisites of a sale are met.

In the case of *American Locker Co. v. City of New York, 308 N. Y. 264, 125 N.E. 2d 421*, the question was presented as whether or not the owner of coin controlled lockers in which the public checked its baggage and other personal belongings for a period time not in excess of 24 hours was subject to taxation under a sales tax which imposed a tax upon transactions which involved the passage

of title. In ruling in the negative the court indulged in the following important dictum:

> "The only real distinction between the two methods of rental service is the semi-automatic nature of plaintiff's service, which is ordinarily rendered by means of the patron himself checking his baggage and removing it from storage, rather than having an employee attend to it as in the case of the handchecking service. The fact that plaintiff through its method of operation has eliminated the necessity of employees attending to the immediate wants of one who wishes to check his baggage is not any ground of distinction for purposes of taxation."

Taxpayers, by reference to "self service" and their appeal to the yellow pages of the Salt Lake City Telephone Directory have attempted to draw attention from the real nature of their business. The Tax Commission recognizes that the said directory is not generally regarded as competent legal authority, but it is suggested that the distinction set forth in that directory is merely one of convenience for the reader so that he might determine whether or not the laundry is one in which he can defray the cost of performing part of the labor himself, or one in which the labor is done entirely by the laundry. The Tax Commission contends that the only real distinction between the two methods of rendering service in this case is the semi-automatic nature of appellants' service. It is submitted that the fact that appellants through their method of operation have eliminated the necessity of employees attending to the immediate wants of one who wishes to wash his clothes is not any grounds of distinction for purposes of taxation.

It is the opinion of the Commission that the presence or absence of the human element in a sales transaction should not be determinative as to whether or not there is a taxable service performed.

POINT III.

THE UTAH LEGISLATURE INTENDED TO EXTEND THE SERVICES TAX TO AMOUNTS PAID OR CHARGED FOR THE USE OF COIN OPERATED WASHERS AND DRYERS.

Taxpayers contend that due to practical problems of collection the legislature could not have intended to extend the services tax in its operation. We need not accept the alleged fact that the cost of altering appellants' machinery would be prohibitive. No such fact is before us, as the practical problems in collection as set out in some detail by the taxpayers have not been stipulated to by respondent and hence are not before the court. However, assuming that practical difficulties do exist, that issue has been before this court at least twice before in *W. F. Jensen Candy Co. v. State Tax Commission, 90 Ut. 359, 61 P. 2nd 629 (1936)* and in *State Tax Commission v. City Commission of Logan, 88 Utah 406, 54 P. 2d 1197 (1935)*, and the court held in both cases that this was a practical and not a legal problem and that the legislature and the court leave the problems of collection to the vendor. The court in the Jensen case found a legislative intent to tax sales of less than 50 cents even though the practical problems involved therein were greater than allegedly exist in the present case. The court in that case said: ". . . The vendor has the obligation to collect the

tax from the vendee; that is, he may 'if he sees fit' do so . . . or he may if he sees fit elect to pay or absorb the tax himself."

A statute is not open to construction as a matter of course. It is open to construction only where it is found that the language used in the statute will bear two or more constructions. However, in interpreting such a statute, the court will not place a construction thereupon which will frustrate the intention of the legislature or place the constitutionality of the statute in doubt. *Dunn v. Bryan, 77 Ut. 604, 299 Pac. 253 (1931), State Water Pollution Control Board v. Salt Lake City, 6 Ut. 2d 247, 311 P. 2d 370 (1957), Howe v. State Tax Commission, ... Utah .....*, (*June*, 1960). Assuming without conceding that the statute involved herein is properly subject to more than one interpretation, that construction urged by taxpayers would render the statute unconstitutional and cannot, therefore, be said to be within the purview of legislative intention. In a regular laundry, both mechanical and personal service are intermingled. Charges made for such laundry service are subject to taxation without differentiation as to which portion of the charge is representative of work performed mechanically and which portion is representative of work or service performed by human beings. In a self-service laundry the customer obtains a price discount by performing certain personal services for himself. He performs no mechanical service and only receives a discount for putting clothes in the washer for him. To say that charges made by this type of laundry are not taxable, whereas charges made by a regular laundry are taxable, is to place an interpretation upon

this statute not contemplated by the legislature such as to constitute an unconstitutional discrimination against regular laundries.

POINT IV.

THE RULE OF STRICT CONSTRUCTION OF TAXING STATUTES IS NOT APPLICABLE IN THIS CASE.

A. There is no real ambiguity regarding the intention of the legislature. It is contended by the taxpayer in the present case that tax statues are to be liberally construed in favor of the taxpayer. This is a correct statement of the general rule.

As such, this rule was adopted in Utah in 1918 and has been reiterated many times since that date. However, it is imposed only in case there is doubt as to the intention of the legislature or as to the authority of the Commission to impose taxes. See *Norville v. State Tax Commission*, 98 *Ut. 170, Moss v. Board of Commissioners, 4 Ut. 2d 60.* In the present case, there is absolutely no doubt as to the authority to levy the taxes in question or as to the intention of the legislature regarding the taxability of laundry services. In other words, the rule that the taxpayers have invoked in their argument in the present case is not entirely applicable to the solution thereof. This is in accordance with a notable authority on taxation, e.g., Cooley, Taxation, Volume II, Section 505, pg. 1125, wherein it is stated:

> "Without regard as to whether tax statutes should receive a strict or liberal construction, it is elementary that they should receive a fair construc-

> tion, to effect the end for which they were intended. This does not mean such a construction as to defeat the intention of the legislature. Where there is really no ambiguity, the rule that the ambiguity must be resolved in favor of the taxpayer does not of course apply."

B. The rule of strict construction may not serve to defeat the intention of the legislature where it is unnecessary.

The rule as set forth by the taxpayers contains a notable omission. It is provided in 47 Am. Jur., Sales and Use Taxes, Sec. 14:

> ". . . (T)he general rule that tax statutes will be strictly construed and that doubts and amibuities will be resolved in favor of the taxpayer and against the taxing power is applicable, *although the rule of strict construction may not serve to defeat the intention of the legislature where this is unnecessary.*" (Emphasis supplied)

As it has been clearly shown in Point II of this brief that the legislature intended to tax such laundry services as are provided by the taxpayers, they should not now be heard to invoke the rule of strict construction in their favor so as to defeat the legislative intent.

C. The construction given a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons. *McKendrick v. State Tax Commission, 9 Ut. 2d 418, 347 P. 2d 177 (1959).*

The Tax Commission, as the body empowered by the legislature to administer and execute the tax laws of the

state of Utah has applied the services tax statute to appellants' activities. The Tax Commission has thus far refrained from applying the tax on rentals to appellants' activites for the reason that these activities have been and are considered to be laundry services within the purport of Section 59-15-4(g), Utah Code Annotated, 1953. This is evidenced by Tax Commission Regulation No. 78 indicating that the tax on services is applied to the charge made to customers of laundries and launderettes. The court should properly allow considerable latitude to this determination as made by the Tax Commission and should not disturb it unless it is clearly erroneous. *McKendrick v. State Tax Commission, ibid.*

CONCLUSION

Appellants' activities constitute laundry services within the meaning of Section 59-15-4(g), Utah Code Annotated, 1953, as amended, and the tax imposed thereon should be upheld.

Respectfully submitted,

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